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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**JOINT MOTION FOR ISSUANCE OF  
LETTER OF REQUEST FOR  
INTERNATIONAL JUDICIAL  
ASSISTANCE AND APPOINTMENT OF  
COMMISSIONERS TO TAKE  
EVIDENCE PURSUANT TO CHAPTER  
II, ARTICLE 17 OF THE HAGUE  
CONVENTION OF 18 MARCH 1970 ON  
THE TAKING OF EVIDENCE ABROAD  
IN CIVIL OR COMMERCIAL MATTERS**

Referral: Hon. Susan van Keulen, USMJ

1 June 6, 2022

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen  
4 San Jose Courthouse  
5 Courtroom 6 - 4th Floor  
6 280 South 1st Street  
7 San Jose, CA 95113

8 Re: Joint Submission for Issuance of Letter of Request for International Judicial  
9 Assistance  
10 *Brown v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (N.D. Cal.)

11 Dear Magistrate Judge van Keulen:

12 The parties in the above-referenced action seek the Court's assistance in order to take  
13 deposition testimony from witness Sabine Borsay in Switzerland. Ms. Borsay, a Senior Product  
14 Manager at Google LLC, is a witness who will offer testimony relevant to this action. However,  
15 because of the COVID-19 pandemic, Ms. Borsay cannot travel to the U.S. for a deposition.  
16 Accordingly, the parties have agreed to conduct a remote live video deposition of Ms. Borsay in  
17 Switzerland, but the parties must first meet certain foreign discovery conditions pursuant to the  
18 Hague Convention.

19 Switzerland, as a party to the Hague Convention, requires litigants to obtain permission from  
20 the Federal Office of Justice before taking deposition testimony of a witness located in Switzerland.  
21 To obtain such permission, the parties must have a United States District Court (1) appoint a Swiss  
22 commissioner and appoint representatives for the parties who will participate in the deposition as  
23 commissioners, and (2) request judicial assistance from the applicable Swiss authorities.

24 To that end, we write to request that the Court grant the parties' Joint Motion for Issuance  
25 of Letter of Request for International Judicial Assistance and Appointment of Commissioners to  
26 Take Evidence Pursuant to Chapter II, Article 17 of The Hague Convention of 18 March 1970 on  
27 the Taking of Evidence Abroad in Civil or Commercial Matters. The parties have agreed that Remo  
28 Decurtins, a Swiss attorney representing the Defendants, will be appointed Swiss commissioner.  
The parties have also agreed that James Lee will be appointed commissioner for Plaintiffs and  
Jomaire Crawford will be appointed commissioner for Google.

Thank you for Your Honor's kind attention to this matter.

1 Plaintiffs and Defendant, Google LLC (hereinafter “Google”) hereby move the Court  
 2 pursuant to Fed. R. Civ. P. 28(b) for entry of an order (the “Order”):

- 3 (1) Appointing James Lee on behalf of Plaintiffs and Jomaire Crawford on behalf of Google,  
 4 as commissioners (together, the “Commissioners”), pending the approval of the Swiss  
 5 authorities, to conduct the examination of witness Sabine Borsay in Switzerland pursuant  
 6 to Chapter II, Article 17 of the Hague Convention of 18 March 1970 on the Taking of  
 7 Evidence Abroad in Civil or Commercial Matters, T.I.A.S. No. 7444, 23 U.S.T. 2555  
 8 (“Chapter II of the Hague Convention”);
- 9 (2) Appointing Remo Decurtins as commissioner (the “Swiss Commissioner”), pending the  
 10 approval of the Swiss authorities, to supervise the examination of witness Sabine Borsay  
 11 in Switzerland pursuant to Chapter II of the Hague Convention;
- 12 (3) Issuing a Letter of Request for International Judicial Assistance (“Letter of Request”)  
 13 pursuant to 28 U.S.C. § 1781 and Chapter II of the Hague Convention;
- 14 (4) Directing submission of the Letter of Request for Assistance to the Swiss Federal Office  
 15 of Justice (“FOJ”) via the Cantonal Court of Zürich for the purpose of approving the  
 16 appointment of the Commissioner; and
- 17 (5) Granting such other and further relief as this Court may deem just and proper.

18 The parties have agreed to use the procedures of Chapter II of the Hague Convention to  
 19 facilitate the deposition of Sabine Borsay in Switzerland, who has consented to being deposed there  
 20 via remote means. Under Chapter II, a deposition is supervised by a Swiss commissioner and  
 21 conducted by commissioners representing the parties and duly appointed by the Court in the U.S.  
 22 proceeding, all of whom are authorized to proceed by the FOJ at the request of the U.S. tribunal.  
 23 This procedure will not restrict the scope of discovery otherwise permissible under the Federal Rules  
 24 of Civil Procedure.

25 The steps to proceed under Chapter II of the Hague Convention are as follows:

- 26 1. The Court must duly appoint one or several commissioner(s) for the purpose of taking  
 27 evidence abroad. A proposed order for the Court to appoint commissioners is attached hereto  
 28 as Exhibit A (the “Proposed Order”).

- 1       2. The Court must issue a Letter of Request to the FOJ for authorization to take evidence  
2       abroad. A proposed Letter of Request is attached hereto as Exhibit B (the “Proposed Letter  
3       of Request”).
- 4       3. The necessary application for authorization (the “Swiss Application”), with the Proposed  
5       Order and the Proposed Letter of Request attached to it, must be filed with the FOJ via the  
6       Central Authority in the canton where the evidence is to be taken, *i.e.*, the High Court of the  
7       Canton of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich 1,  
8       Switzerland.<sup>1</sup> Defendant will undertake this step if the Court grants the instant motion.
- 9       4. Upon approval from the FOJ and subject to the terms contained in the Proposed Letter of  
10      Request and/or the Swiss Application, the parties will arrange for a live video deposition.  
11      Remo Decurtins will be present in person at the deposition of Ms. Borsay to supervise  
12      proceedings.
- 13      5. The deposition will take place at the Swiss offices of Quinn Emanuel at Dufourstrasse 29,  
14      8008 Zürich, Switzerland. Ms. Borsay has agreed to voluntarily comply by proceeding  
15      pursuant to Chapter II of the Hague Convention.
- 16      6. Neither the entry of the Proposed Order, the Proposed Letter of Request, the submission of  
17      the Swiss Application nor the conduct of the deposition pursuant to Chapter II of the Hague  
18      Convention shall constitute or operate as a waiver of the attorney-client privilege, the work  
19      product doctrine, or any other privileges, rights, protections, or objections that may apply to  
20      that evidence under the laws of Switzerland, or of the United States, nor as a concession that  
21      any assertion of any such privilege, right, protection, or objection is necessarily valid.

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27      <sup>1</sup> The application is sent to the competent Central Authority, *i.e.*, the High Court of the Canton  
28      of Zurich, International Judicial Assistance, Hirschengraben 13/15, 8021 Zurich 1, Switzerland.  
After examining the Request, the Central Authority will forward the application to the FOJ.

1 DATED: June 6, 2022

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**ATTESTATION OF CONCURRENCE**

I am the ECF user whose ID and password are being used to file this Joint Motion for Issuance of Letter of Request for International Judicial Assistance and Appointment of Commissioners to Take Evidence Pursuant to Chapter II, Article 17 of The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document

Dated: June 6, 2022

By /s/ Andrew H. Schapiro

Andrew H. Schapiro

*Counsel on behalf of Google*